THE

Disintegration of Monopoly

and other Articles

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SALT LAKE CITY
1913

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The Disintegration of Monopoly.

The tariff and the trusts are vaguely associated in the public mind as having a causal relation. It is true they have a contemporary presence in our politics, and while both the tariff and the trusts affect commodity prices in our markets to the restriction of competition and enhancement of profits, yet it is not true that there is the direct relation between the tariff and the trusts which is generally assumed. Indeed it may be said that the most notable of our trusts, the Standard Oil Company and the American Tobacco Company, could in no wise have been affected by the let or hindrance of the tariff of duties on importations. The steel and iron industry has been stimulated and sustained by the tariff as advocated by the Pennsylvania school of protection, yet it must be said that the protective tariff has not been an important contributory factor in the organization of the steel trust or the United States Steel Corporation as it is properly designated. And it is right at this point that there must be a clarifying of ideas before progress can be made in the disintegration of monopolies as exemplified in the highly organized and integrated combinations of capital and control which have had such notable manifestation in recent American industrial enterprise.

The preferential discrimination which the tariff gives to the home producer in the American market operates equally in favor of both small and large producers. A reduction of prices attendant upon a reduction of the tariff would reduce the profits of the industry affected, but such reduction of profits would have a relatively equal effect on both small and large enterprises and would not tend di-

rectly to the breaking up of combinations, unless it be that the increased efficiency required by new foreign competition would make industrial operation in smaller units more economical and profitable. The problem of the trusts is a problem quite apart from that of the tariff and while there should be a permanent tariff policy, a way must be devised for the restraint and disintegration of monopoly quite apart from the tariff on imports for the purposes of levying revenue to maintain the operations of the government. To say that the trust problem has not a predominating relation to the tariff is not to say, however, that the trust problem has not an intimate relation to the fiscal policy of the federal government. It most assuredly has, for the trusts have an intimate relation to the industry and commerce of the country upon which the constitutional powers of the federal government were especially designed to operate.

The trusts were an important process in the development of monopolistic corporate promotion in the United States, the ultimate form of which has become the financial or securities holding corporation. Even the holding corporation has been more highly integrated into the operating corporation in which have been actually merged the constituent corporations which, under the trust system of combination placed their several stocks in the hands of common trustees, who determined the policy of the combination, collected profits and disbursed dividends of the same to the holders of the trust certificates. The more primitive forms of combination such as pools, associations and gentlemen's agreements. while prevalent in local communities, are no longer in vogue for large monopolistic enterprise.

A remarkably clear statement of the trust process in monopolistic combination was made more than twenty years ago in a notable speech by Hon. Wm. L. Wilson of West Virginia, in the House of Representatives. This was during the first session of the Fifty-first Congress, on May 1st, 1890. The perspective of subsequent experience

makes this statement the more valuable as a conception of the trust process, a correct and precise understanding of which is necessary to an effective solution of the trust problem. Mr. Wilson said:

"In general terms we all know that a trust is the latest and most perfect form of combination among competing producers to control the supply of their products in order that they may dictate the terms on which they shall sell in the market, and may secure release from stress of competition among themselves. From the very beginning of trade, perhaps, certainly in all its known history, there have been various forms of combination, and we have long been familiar with them in this country under the name of pools, corners, combines and the like. * * *

"A combination or pool is a voluntary association depending upon the good faith of the parties associated and carrying with it those elements of weakness and disintegration that necessarily belong to a voluntary association. A trust is a legal consolidation of properties, a legal concentration of control. Historically, it grew out of the greatness and the necessities of the Standard Oil combination. * * * * Accordingly the able solicitor of the Standard Oil alliance worked out for that alliance the trust scheme of combination which has subsequently swept the field of American industry and has been adopted with greater or less success by so many would-be monopolies. * * *

"The shares of stock in these various state corporations were then to be transferred by the holders of the stock to the legal ownership of nine trustees, who, in return therefor, gave the owners of stock in the several companies, certificates of stock in the Standard Oil trust. * * *

"It was soon discovered that the trust scheme devised for the purpose of an existing combination, offered a new and admirable scheme for forming monopolies out of existing competitors, and it spread with rapidity as soon as its form became divulged. * * *

"I have said this much to show that the common basis of the trusts is the corporation. The deed under which the sugar trust was organized required that all the refineries should first become corporations, and that all subsequent applications for admission should qualify themselves in like manner. Indeed it may be affirmed that no permanent trust can be built on a less solid basis. Combinations very effective for some temporary purpose or within a limited area, may be formed by individuals or partnerships, but they will be subjected to all the contingencies of death, bankruptcy, bad faith, and voluntary withdrawals. Those which are to become a menace to the public cannot be built upon a foundation so shifting. * * * We all know that

the individual has disappeared in the corporation which alone offers the aggregation of means, the exemption from physical death, and the unity of control that are indispensable for the gigantic enterprises of modern production and trade. * * *

"If, therefore, the organization of a trust must have the corporation as its basis, it is clear that the first and most effective blow must be struck, not by congress, but by the states.

"The states, not congress, grant the charters for these corporations. It is at once their duty, and it is easily and clearly within the sphere of their lawful power, to supervise the creatures which they bring into being, so as to prevent the franchises granted by the people from being used for the oppression and detriment of the people. The courts of New York have already shown how this may be done. In the proceeding against one of the companies that went into the sugar trust, Judge Barrett held that a corporation has no authority to enter into a partnership or combination of that kind and by the mere act of doing so forfeited its charter. * * *

"And now, what can the federal government do for suppressing, or at least rendering harmless, these new and dangerous monopolies When it has recourse to the criminal law and seeks to destroy them by pains and penalties, its lawful authority is limited to interstate trade, except when legislating for the district of Columbia and the territories. If any one supposes that such a bill as this (the Sherman Act) no matter how severe the punishment it threatens, or how sweeping may be its prohibitions, will prevent such combinations as it seeks to destroy, he does not, I fear, understand the structure and operation of trusts. How would such a law reach the Standard Oil Trust or materially interfere with its operations? Had not the members of that great alliance the legal right to vest the various properties and the businesses they already had in the name of nine trustees?

"The trustees of the sugar trust, when put upon the witness stand, denied that they exercised any functions except receiving profits and distributing dividends. They denied all privacy with contracts, combinations or conspiracies, and how can you prove guilt upon them under the rules of evidence required in criminal proceedings?

"Now you are not going to have a trust formed unless the trust can control and practically monopolize the production or sale of some article in this country—some article, I might add, of universal or common consumption, as I have described. It is a combination for the very purpose of forming a monopoly, and to form a monopoly it must be possible to do away, as nearly as may be, with competition.

"You cannot, therefore, form a trust in articles of which the producers are scattered all over the country; but any article, like sugar, the refining or manufacturing of which can be concentrated in a few or in a moderate number of establishments, can be consolidated into

a trust that will have a monopoly of the home market unless there be sources of supply outside the trust. Now, sir, it is just here that the federal government, by its system of import duties, already prohibitory as to many articles of common consumption, and soon to be made so as to others, presents the most favorable and tempting field in the world for the successful formation and growth of trusts."

With the recommendations of Mr. Wilson we are not specially concerned. He was one of those who believed that the tariff was the mother of trusts, a view which has become traditional with his political successors. His observations on state action refer especially to the North River Sugar Refining case in the Court of Appeals of New York. The work of General Roger A. Pryor in this case was a remarkable achievement in the anti-trust movement. Mr. Pryor was truly a pioneer in securing the application of judicial remedies to the evils of the trusts.

But Mr. Wilson rather advocated the removal of the tariff on sugar as the proper means for reducing the sugar trust. It is presently asserted that the sugar trust advocates free importation of raw sugar and supports the proposed free sugar policy of the government. There is no leading government which does not raise a revenue out of the consumption of sugar. And from a purely revenue view, it is clear that as between the annual saving of forty cents per capita to the people and the deprivation of the federal treasury of annual revenues to the extent of forty millions of dollars, that the balance of sound policy and convenience is in favor of the retention of the duty on sugar. The principal result of the free sugar policy will be the absorption into the treasuries of the refining companies, of the money presently paid to the government in revenues. The abrogation of a moderate duty on a commodity of wide consumption does not appreciably affect the price to the consumer, but is of great benefit to the monopolistic producers of such commodities and of equal deprivation to the federal treasury in loss of revenues. There ought to be a permanent specific duty on sugar of one cent per pound, and rather than a gradual abrogation

of this duty, there ought to be an excise on domestic sugar, which, by graduation, in cumulative tenths should approach the impost on foreign sugar. A true conservation of resources in the levy of revenue, requires that the annual labor and profits of the country contribute to the revenues in preference to the principal of accumulated wealth and capital.

State Action Against Trusts.

It is true that the states separately charter the industrial corporations which combine by trusts and mergers into monopolistic institutions. And there is much that can and should be done by the separate states to regulate corporations created under state law, or admitted to do business under state license. There are no essential limitations on the political rights and powers of the states to deal with these questions as they concern themselves. They may not confiscate property except as a penalty for delinquency or crime, but the vested right to property does not include the right to hold it in jointure, trust, or mortmain, or to use it in association or combination with others. Combination, either for the tenure or the use of property, is not a natural but rather a conventional right, and associations for the holding or use of property ought not to be licensed except for social and public purposes. Corporations as such have no personal or natural rights, but only the conventional rights conferred by law. And it is right here that it should be understood that much of the desperation displayed by the people against corporate power, has had its genesis in the idea that corporations as such were within the protection of the Bill of Rights. And we do need a corporation code of penal statutes, which shall apply to these associations, laws of conduct, liability and responsibility which are not possible to apply to natural persons for the protection of whose natural liberties the bill of rights was incorporated into our organic laws and constitutions. The conventional rights

of corporations ought to be the limit of their powers. This is properly the field of state police.

As relates to corporate monopolies the state of New Jersey has made a notable example in the enactment of laws to prevent and penalize common abuses of the corporate franchise. These include the following provisions:

1. Defines trusts and provides penalties against the same.
2. Prohibits watered stock.
3. Penalizes incorporation for monopoly.
4. Prohibits holding corporations.
5. Limits issue of securities for creating mergers.
6. Requires license from Public Utilities Commission for merger of competing corporations.
7. Prohibits discrimination by corporations in the prices of commodities as between different communities.

The worst that may be said of the seven bills of New Jersey is that they may drive some predatory creatures into other states, there to prey on the people. But the other states have an equal right and power to take similar legislative measures for their own protection. And certainly there is a field here which is so particular and local that it may only be treated by local and state police. Every state, indeed every municipal community, has its combinations for the fixing of prices and monopolization of profits. These have become a veritable imperium in imperio in most every trading community. Every master artisan or craftsman who does not belong to the order is denominated a "pirate in the business." There is a conspiracy to prevent his competition in the trade, and to keep him from obtaining credit of money or materials for use in his business. It is frequently impossible for such outsiders of whatever artistic competency to purchase supplies and material. These are prevalent and malignant conditions in many of our cities. These conspiracies are local and frequently of more immediate and direct harm to the people, than combinations of wider extent and activity. These traders and artisans all operate under the license of the

state or some subordinate body politic. Their licenses should be revoked for discrimination as between patrons and purchasers, and for participation in conspiracy to fix prices and to persecute those who may not be parties to their associations. And yet how little progress we have made in the solution of these distinctively local trade problems. Remedy is indeed difficult of application, but the long standing of the abuse may be brought home by present experience in the perspective of a statement made by Adam Smith in 1776:

"People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices. It is impossible, indeed, to prevent such meetings by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary."

The feeling of the consuming public against combinations of merchants is not wholly due to prejudice. It is founded on experience quite as much as upon tradition. The traditional view is thus stated by Thomas Jefferson in a letter to Horatio G. Spafford, March 17, 1814:

"But merchants have no country. The mere spot they stand on does not constitute so strong an attachment as that from which they draw their gains."

The interest of those who busy themselves for profit is not common with that of those from whose consumption and labor the profits are drawn. To quote again from Adam Smith:

"The interest of the dealers, however, in any particular branch of trade or manufacture, is always, in some respects, different from, and even opposite to, that of the public. **To widen the market and to narrow the competition, is always the interest of the dealers.** To widen the market may frequently be agreeable enough to the interest of the public, but to narrow the competition must always be against it, and

can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow citizens. The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous but with the most suspicious attention. It comes from an order of men whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it."

It may be observed, in passing, that Thomas Jefferson said of Adam Smith: "In political economy, I think Smith's 'Wealth of Nations' the best book extant."

These community problems are in fair way of progressive settlement by the awakened civic conscience and activity which is addressing itself directly to the improvement of municipal government and the amelioration of social conditions in the cities. The progress attendant upon the commission form of government in the smaller cities in the development of a unified civic spirit to the exclusion of factionalism and partisan pride, has already been notable. Public markets are being established, to which may be added municipal clearing houses for the registration of claims; the deposit, transfer and exchange of earned credits, and the merger and discharge of debts, together with the proscription of petty debtors, with provision for the preferential employment of debtors, who are able and willing to work to acquire credits to liquidate and discharge their debts and thus restore and maintain their creditable standing in the economic and business community. Such a public clearing house would facilitate the circulation of labor and commodities and promote necessary and healthful industry.

There is perhaps not a community where the distribution of the daily food to the people is not rendered more costly by the inefficient employment of too many persons, all of whom are striving to squeeze profits out of the consuming public, and often are driven to conspiracy and com-

bination to accomplish this result. The brokerage and retail of commodities of wide general use may perhaps be a proper community undertaking. The consumption of coal, gas, lighting and other commodities and service, is sufficiently large in any community, as to make the distribution of such commodities and services to the consuming public a matter of public concern. It may be that exclusive annual franchises for the supply of such commodities and service, could be let to those who offer the best service at the lowest stipulated rate, and thus the waste of an inefficient and cumbersome machine of distribution be avoided and saved to the community. But, these are problems which must be worked out by each civic community for itself, and experimentation by the free will of the people of such communities ought not to be unduly hindered or restrained.

Wherever an exclusive franchise is given—exclusive within the local territory in which the franchise may be exercised—the public authority has the right to fix tolls and prices. This is a practice which was established before we heard so much about "unconstitutionality" in the regulation of trade and business. In Virginia, before the War, the toll of grist mills was so regulated. It is really interesting at this day, to read this ante-bellum statute:

> "At every mill which grinds grain, whether the same be established under an order of court or not, there shall be well and truly ground all grain brought to the mill for the consumption, when ground, of the person bringing or sending it or his family, and in due turn, as the same is brought; and there shall not be taken for the toll, more than one-eighth part of any grain of which the remaining part is ground into meal, nor more than one-sixteenth part of any grain of which the remaining part is ground into hominy or malt. If at any mill there be a violation of this section in any respect, the proprietor thereof shall, for every such violation, forfeit to the party injured five dollars; but with these provisoes, that the proprietor shall not be obliged to run more than one pair of stones to grind grain brought to his mill for the consumption of the persons bringing or sending it, or their families; and that such proprietor may grind grain for the consumption of his family in preference to that of others."
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> (CODE OF VIRGINIA, 1849, Chapter LXIII. Sec. 12.)

Labor Unions.

There is a current feeling that as between the mercantile fraternity and the labor unions, the consumer has been ground as between upper and nether millstones. But we cannot apply to labor the same rule which is applied to goods, wares and merchandise. The personality, dignity and will of those who labor forbid this. Service must be voluntary and equally so, the will must be free not to serve. No other condition is consistent with the principle of personal liberty.

Though concert and conference to fix prices and control output of commodities are properly outlawed, the natural right of men who subject themselves to the employment of other men, to meet and associate and even to jointly determine upon what wage and terms they will subject themselves to employment is well within their natural rights. Men severally and jointly have the liberty of willing whether to work or not to work. This is a natural right which does not depend upon the license or franchise of the state.

It is not necessary to enforce competition here. Cumulative hunger and necessity ultimately drive labor to work on the best available terms of employment. No strike from employment can be of longer voluntary duration, than the supply of accumulated stock, or money to sustain the strikers. Unlike the capitalist, the laborer, though he combine with others, to restrict competition, has no accumulated stock to support himself in idleness and hunger will drive him to work on the best wages that are offered. And human hunger is a sufficiently potent distintegrator of labor combinations aiming at monopoly. Then, too, there are the laws which require indemnity for the breach of contracts and which prohibit boycotts and penalize conspiracies to commit crime and forbid the unlawful use of force, intimidation or duress.

Labor unions as co-operative associations of men for

social endeavor, have made notable contribution to the economic amelioration and moral improvement of those who labor and for this social service should receive public approbation. As a consumer, labor wants lower prices and higher wages, but where wages are appreciated these higher wages reflect themselves in the increased price of goods of which those who labor are the greatest consumers, and thus labor sustains in part, at least, the enhanced cost of wages.

It is competition between capitalists and combination between laborers that will most effectually reduce the share of capital in the profits of industry, with the largest diffusion of benefits to the consuming public in which the laborers have a clear preponderance of numbers. As wealth or capital increases, the tendency is for its profits to become less and conspiracy and combination against the consuming public is contrived to increase and insure the profits of capital.

Restraint of Trade.

And it it right here that considerable confusion has resulted as to the proper relation of industrial labor and capital to competition. Restraint of trade, as that phrase is known to the common law, was applied to certain contracts whereby natural persons—usually traders or artisans—bound themselves by contract not to exercise their craft or trade within the realm. These contracts were declared void by the courts; that is to say, upon the voluntary breach of such contracts, the courts refused to award damages to the complaining party because as the courts said, such contracts were void as against public policy and the breach of the same would not sustain an action at law to recover damages. But there was no penalty for the voluntary retirement of a natural person from the exercise of his trade. The matter could only come before the courts when some person, who had agreed that he would not exercise his trade, should be impleaded on a

charge that he had exercised his trade in breach of an agreement not to do so. The courts simply refused to entertain such cases on the ground that it was a natural right for a person to exercise his trade; that it was in the public interest that he should do so; that contracts which restrained a person in respect to the exercise of his craft or trade, were void as against the public interest and policy; that a person had a perfect right to break such contracts and exercise his craft or trade; and if he were sued at law for so doing, the courts would not entertain the suit—they would just throw it out of court as we would express it in common parlance. And this is about all there was to the common law doctrine as to contracts in restraint of trade. Certainly in these days, there are no considerable evils resulting from men making voluntary contracts that they will not work or engage in business. The prevalent restraints on the freedom and equality of competition are of an entirely different character and call for the application of an entirely different correction. The evils from such personal contracts are quite negligible; indeed, they bear no pertinent relation to contemporary industrial and economic problems.

And now a word in passing as to "reasonable restraint of trade," another phrase of supposed mysterious meaning. When a trader or an artisan had established himself in the good will of his patrons, customers and clients, all of which made his business valuable, and he sold out his business to another and agreed in a covenant collateral to the sale, that he would not engage in his old business in the same town but would leave his successor free to trade in the same field, without the withdrawal of trade and custom by the continued engagement of the seller in business in the same town; such a contract restraining the seller in the exercise of his trade among his old customers was denominated a "reasonable" contract and such a restraint was held to be a "reasonable restraint of trade" and not sufficiently contrary to public policy to declare it to be void. The person who had engaged to refrain from trade

in the town where the business he had sold was developed, was free to trade in any other town in the realm, but if he should exercise his trade in the old town, to the damage of the business he had sold, then he could be sued at law for damages and a court of equity might also issue its injunction to prevent him from trading in that town in breach of his contract not to do so. And this is about all there is to "reasonable restraint of trade." If a physician sell his professional practice to another and make an agreement by which he binds himself, not to practice in that town, by virtue of which the courts may restrain him from so doing, the fact that he has to go to some other town to practice medicine is quite wholly a private matter. Certainly it is not of sufficient public interest as to call for the interposition of the legislature.

Restraints on the jus disponendi or right of alienation of property created by deed or devise granting or conveying the property were at common law held to be void except in the case of married women, in which instance, the restraints created by the donor of the property were upheld during the coverture of marriage.

These contracts—those which were void and those which were reasonable—were contracts which related quite exclusively to personal services, trading and business, and have little or no relation to current problems in public policy and economy. It is no wonder that the straining to elucidate them in their application to modern problems has not resulted in any satisfactory explication or discovery as to what they properly have to do with either trusts or monopolies. For these arise from entirely different causes and contracts, and by entirely different legal and business methods and practices. Neither "restraints of trade" nor "restraints of alienation," as these terms were used at the common law, have any relation to the combinations and conspiracies to engross and monopolize trade that are presently the chief concern of our politics.

We have been on the wrong track. It is not the voluntary contractual restraint of trade in personal business,

it is the engrossment of trade in commodities that we are after. And what of the common law on interference with markets? We have almost forgotten—lawyers and laymen alike—that there is any common law on this subject. What of forestalling, regrating and engrossing at the common law? These words, I dare say, have to us a strange and unusual sound and yet they denote the doctrines of the common law which have the nearest relation to the combinations and conspiracies for the engrossment of trade which we denominate trusts and monopolies.

"Forestalling is to buy or contract for any merchandise or victuals on the way to market; or to dissuade persons from bringing their goods or provisions thither; or to persuade them to enhance the price; or by any such devices to make the market dearer to the fair trader with intent to raise the price."

"Regrating is to buy corn or other dead victuals in any market, and to sell it again in the same market, or in its neighborhood.

"Engrossing is to get into one's possession large quantities of corn, or other dead victuals, with intent to sell them again."

(Synopsis of Law of Crimes and Punishments, by John B. Minor, p. 171.)

Now these are definitions of offenses at the common law, for which as misdemeanors, penalties were provided for prevention and punishment. And while forestalling, regrating and engrossing were practices which were punishable under more primitive conditions than exist in interstate commerce today, yet penalties for these offenses, which interfere with the freedom of trade in markets, might again be applied to local markets as they exist or may become established in the cities and towns of the country. These common law definitions of misdemeanors go right against some of the most common practices of speculators who take unlawful toll of the trade in food and other commodities of general consumption.

Monopolies.

At the common law, monopolies could only be created by franchise evidenced by letters patent of the king. The law courts, however, refused to validate such grants

or to protect the patentees in the exercise of their exclusive privileges.

Agreements to fix prices, indeed, were void, but such "gentlemanly understandings" then as now seldom came before the courts. If some hardy conspirator sought to recover damages against one of his fellows who had been untrue to his pledges as to prices, the courts simply refused to entertain the case—"threw it out of court," so to speak. The word "reasonable" has never been applied to such arrangements and as to whether or not the prices so arranged were "reasonable," the courts have had no concern. But there was no penalty attached to such agreements, except, perhaps, in the case of laborers who associated to fix wages, as to which associations there was at an early period some repressive parliamentary legislation which has long since been repealed.

Labor unions habitually adopt wage scales. Such agreements, however, have no legal sanction and are void. The unions never think of rushing into court to ask damages against a backslider who works for less than the union scale. If they did so the case would simply be thrown out. And although such practices are common among both labor unions and mercantile associations and though their agreements for a scale of wages or of prices are void there are no penalties except such as are prescribed by legislative statutes, and these, of course, of modern enactment. There were no common law criminal definitions covering such agreements, and even these modern criminal statutes seem to have been quite as innocuous as the common law which made no pretense to punish participation in such agreements. The prevalent evils of monopolistic combination do not arise from these merely executory personal arrangements as to price maintenance. They arise rather as a result of executed contracts, grants and conveyances respecting the ownership, control and use of industrial property, to which contracts the common law doctrines against restraint of the personal right to trade and re-

straint of the personal right to alienate property, have no application.

The Sherman Law.

The most notable of statutory prohibitions against trusts and monopolies has been the so-called "Sherman Law," enacted by the Congress of the United States and technically known as the act of July 2nd, 1890, to protect trade and commerce against unlawful restraints and monopolies. This notable statute has been accredited to John Sherman, George F. Hoar and George F. Edmonds, all distinguished senators of the United States. It has been accepted as an enactment of the common law doctrines with respect to the freedom of trade, into the federal law of the United States, as respects trade between the states and with foreign countries. Like the Statute of Frauds, its interpretation has cost a king's ransom; but it must be said that even as finally clarified and constructed, the Sherman Act will never occupy the notable place in our federal law which the Statute of Frauds does in the field of British legislative jurisprudence.

Section One of the Sherman Act provides that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal." These words, indeed, have an impressive and comprehensive sound, but the fact is that there never was a trust or combination which had for its purpose the restraint or restriction of the volume of interstate or foreign trade, or of the consumption which sustains this trade. Indeed the trusts have directly sought to widen the market and increase the trade of consumption, both interstate and foreign. And all straining to find in such combinations a restriction of trade is a vain endeavor. It is the engrossment, not the restriction of trade, which has been the moving impulse of the trusts. And such combinations or trust contracts are in no sense contractual restraints on the per-

sonal liberty of trade or alienation as known to the common law.

Section Two of the Sherman Act provides that "every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be guilty of a misdemeanor, and, on conviction thereof shall be punished by fine not exceeding $5,000.00 or by imprisonment not exceeding one year, or by both such punishments in the discretion of the court."

Section Three is merely a repetition of Section One, providing for its application to the District of Columbia and the Territories.

Section Four grants jurisdiction to the circuit courts of the United States to issue injunctions to restrain violations of the act. This is an effectual, though very unusual, provision for courts of equity to restrain the violation of a purely criminal statute in cases where private property is not being directly infringed or damaged. This section has been the only vital one relating to procedure provided in the act. Indictments under the penal provisions of Sections One, Two, and Three have quite uniformly failed. The forfeitures provided in Section Six have never been claimed or enforced, and the right to sue for damages by a person privately aggrieved or damaged by a violation of the act as provided in Section Seven has not been of any extended practical utility to those who have been damaged by the ruthless and unequal competition and practices of the monopolies which the act purports to prohibit, but whose unlawful methods and practices the act does not specifically define for the purposes of either public punishment or private compensation.

As respects the definitions of the law and the application of judicial injunctions for the dissolution of monopolistic combinations, the reference of the contracts and trusts specified in Section One to the monopolies specified

in Section Two, would bring into correlation the really important and potential definitive parts of the statute:

> "Every contract, combination in the form of trust or otherwise, or conspiracy * * * to monopolize any part of the trade or commerce among the several states or with foreign nations * * * is hereby declared to be illegal."

This composite paragraph, together with the provision for injunctions to dissolve such combinations as are declared illegal by the act, is all there is of vital signification or utility in the Sherman Law.

The very lucid opinion of the supreme court in the Standard Oil case, makes it clear that whether in a particular case a conspiracy or combination in the form of trust, or in other form, has a conscious or casual intendment to monopoly must be adjudged upon the application of the processes of judicial rationalism.

But there are those who doubt the effectuality of the decrees entered in the trust cases and of the judicial means adapted to their execution. Thus Honorable Peter S. Grosscup, referring to the decree in the Northern Securities case, said:

> "As a road to restored individualism in trade and commerce it (the Sherman Act) led nowhere; every one of its boasted achievements, like the Northern Securities case, for instance, faded entirely away the moment the last line of the decree had been written. The 'dissolutions' were dissolutions on paper only; they produced no effect either on the conditions of trade or the relation of individual men to opportunities in trade. Where change followed at all, it was in the direction not of individualism, but of more intensive concentration—the previous constituent corporations welded into single corporations—thereby replacing what in law was a 'combination' by what in law was a single entity as in the steel and other industries." (North American Review, July, 1911.)

In the Northern Securities case the decree of the federal court dissolved a trust in which the Northern Securities Company was corporate trustee. In the American Tobacco case the court dissolved a highly integrated

monopolistic corporation. Of this decree the late President William H. Taft, in a special message to Congress, on December 5th, 1911, said: "I venture to say that not in the history of American law has a decree more effective for such a purpose been entered by a court than that against the tobacco trust." It is currently believed that the Honorable, the Attorney General of the United States, does not share this opinion.

Against the decision of a practically unanimous court in the Standard Oil case, the Honorable William J. Bryan deeply stirred his emotions. Said he:

> "In the light of this decision * * * we may as well recognize that we now have no criminal law against the trusts. * * *
>
> "Opinion on the trust question is largely a matter of bias. It is a question of the heart as well as the head. * * *
>
> "There are a number of things that impress one as he reads the majority and minority opinions, and the impression made is so deep that feeling increases with contemplation."

And the Weekly Commoner said:

> "One by one the beautiful passages of the Bible are going out of use in plutocratic society. It has become necessary to drop them out of deference to the feelings of some of the more sensitive members of high financial circles. Solomon said, 'A good name is rather to be chosen than great riches, and loving favor rather than silver and gold,' but this is offensive to the worshipers of men like Rockefeller.
>
> "'No man can serve two masters,' is good philosophy, as well as good religion, but it is objected to by the friends of some of the senators. And now since Chief Justice White has succeeded in committing eight members of the court to the position he took fifteen years ago in favor of judicial legislation for the protection of trusts, it may be necessary to drop the 26th verse of the 11th chapter of Luke: 'Then goeth he and taketh to him seven other spirits more wicked than himself, and they enter in and dwell there; and the last state of that man is worse than the first.'"

Of course the Chief Justice needs no defense from such aspersions. He is the peer of any living jurist.

Though William Jennings Bryan thinks that the Standard Oil decision is all wrong, William Howard Taft

thinks it is all right and asserts that the contrary view "is erroneous and is based on the assumed inefficiency and innocuousness of judicial injunctions." Among those who entertain this erroneous view is Theodore Roosevelt, the projector of the commission form of government for trusts. To Mr. Roosevelt there are good trusts and bad trusts. He would separate the sheep from the goats. He don't like goats; they don't shear well. But this plan is not original with Mr. Roosevelt. Unlike some other things we have heard of, it was not discovered in the laboratory of biological democracy at Oyster Bay. But we are progressing toward the commission form—already the Department of Justice, by and with the approval of the circuit courts, has decided in particular cases, just what may and what may not be done, and just how it shall be done. The department has straightened out the Harriman Railroads. The Powder Trust, the Electric Lamp Trust and some other trusts have obtained their several prescriptions from the department and have taken their medicine in private. We have seen no testimonials as to just how these anti-fat prescriptions affect the patient. And then it is not yet determined whether the real trouble is physical or mental. Mr. Taft, naturally enough, thinks there is nothing improper in being big and Mr. Roosevelt, too, thinks that big ones are all right, unless they are evil-minded. To get rid of the evil—that is the thing. As Mr. Taft says:

> "Mere size is no sin against the law. The merging of two or more business plants necessarily eliminates competition between the units thus combined, but this elimination is in contravention of the statute only when the combination is made for the purpose of ending this particular competition, in order to secure control of and enhance prices and create a monopoly."

So as Theodore Roosevelt would have it, and as William H. Taft says, it all depends on good intentions. Just say, "We did not mean to do it," "We did not do it on purpose," and you have an eleemosynary corporation.

We must pass from judicial to political remedies for the solution of the trust problem. There must be a more automatic and general disintegration of monopoly than may be obtained by the slow application of judicial injunctions in particular cases. It is claimed, however, by notable publicists that we have reached the limit of the application of the political power of Congress for the disintegration of monopoly. Hannis Taylor expresses this view:

"In the United States the transition from individualism to collectiveism has brought a revolution in economic conditions whose outcome involves the right of the National Government to abolish or seriously modify trusts and monopolies. Congress has exhausted its legislative power and it now remains for the Supreme Court to determine whether or not its efforts have been efficacious." (Origin and Growth of the American Constitution, Boston, 1911, page 298.)

Federal Incorporation.

The most sanguine professors of the adequacy of the Sherman Act as interpreted by the Federal Supreme Court are not without doubt as to the ultimate effectuality of the statute for the disintegration of monopolistic combinations and are anticipating more direct federal visitorial power over corporations which may only be realized by the creation of corporations by Congress to engage in industrial production and commerce. Thus President Taft said, in a special message to Congress on January 7th, 1910:

"If the prohibition of the Anti-trust Act against combinations in restraint of trade is to be effectively enforced, it is essential that the national government shall provide for the creation of national corporations to carry on a legitimate business throughout the United States."

And in his message of December 5th, 1911, the President again urged this view on Congress:

"I renew the recommendation of the enactment of a general law providing for the voluntary formation of corporations to engage in commerce between the states and with foreign countries."

Now, while the incorporation of railways under federal law would likely be of great utility in the alignment, articulation, and systematization of ways for the accommodation of the traffic and commerce of the country, and while such an exercise of congressional police would be well within the constitutional power of Congress to establish and maintain post roads, it is to be doubted that Congress, under the Constitution, has any power to erect corportations for purely industrial and productive purposes. Certainly such a proposition is directly contrary to the reasoning of Chief Justice Marshall in Osborne against Bank of the United States, 9 Wheaton 738, wherein the power of Congress to create banking corporations as fiscal agencies of the government was upheld and wherein the Chief Justice says:

> "This mere private corporation engaged in its own business, with its own views, would certainly be subject to the taxing power of the state, as any individual would be, and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs, would no more exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner. But the premises are not true. The bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies, having no political connection with the government is admitted; but the bank is not such an individual or company. It was not created for its own sake or for private purposes. **It has never been supposed that Congress could create such a corporation.** The whole opinion of the court in the case of McCulloch against the State of Maryland is founded on, and sustained by the idea that the bank is an instrument which is necessary and proper for the carrying into effect of the powers vested in the government of the United States. It is not an instrument which the government found ready made and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only."

But it is eminently true that the trust problem is one of intimate relation to industrial corporations, and that

these corporations are erected by the states and are exclusively subject as such to the visitorial power of the sovereignties creating them.

The original Standard Oil trust, and the other trusts which followed in its train were created by the placing of the shares of stock of the combining corporations in the hands of a common board of personal trustees who would vote the stock for the unified direction of the corporations, collect the profits of the combine and declare dividends of these profits to the holders of the trust certificates. It is likely that these trust conveyances could have been dissolved and recalled by the cestui que trustent. There is no reason why such shares of corporate stock should have been held in trust against the will of the beneficiaries of the trust. The trust was not of such a public or charitable character as that a court of equity would sustain it against the will of the equitable owner of the stock. But the trust was created and continued by the voluntary act and approbation of the individual stockholders, all of whom were participators in the combination of direction and control created by the trust. In a smaller way, a corporation itself is a trust wherein the stockholders grant the use, direction, and control of corporate stock and property to a board of trustees or directors, to be exercised in pursuance of the trusts set forth in the articles of association, the trustees or directors being incorporated and given perpetual succession and corporate capacity by law. The holding of stock in trust may also be freely exercised by a corporate trustee as the Northern Securities Company, with perpetual succession in the trustee. And there is nothing generally in modern corporation law and practice to prevent a monopolistic corporation, without using the trust method of combination, from issuing its shares of stock in payment for any number of industrial plants and properties, taken at appraised values, according to the conventions of the parties, and with the consequent dissolution of the former separate corporate owners of such industrial property. Indeed the old combination by holding trustees

or by the holding corporation has been succeeded in notable instances by highly integrated corporate organizations under liberal corporation laws and by the free contractual acts of all persons concerned. From such combinations the distinctively trust feature may be entirely absent. It is a significant fact, however, that in usual practice the operating industrial units are separate corporations and that the combination of these operating corporations is a fiscal and securities company, such as the United States Steel Corporation, which, though highly integrated, retains the separate entity of the constituent companies in the monopolistic financial corporation. So it may be said that the problem of the disintegration of monopoly is no longer a distinctively trust problem.

And while The Seven Bills of New Jersey lay down effectual principles for the exercise of visitorial power over corporations, such laws are limited in operation to the states enacting them and which have created the corporations which are thereby to be subjected to such visitorial power. The trend of state corporation policy, however, has been to forbid the creation of corporations by special legislative charters and laws and instead of being an exclusive franchise, the privilege of incorporation has, by general laws, been made open to all without discrimination or restraint as to persons, and indeed without limitation with respect to capital, stock or property, term of corporate duration, extent or charcter of business or field of operation, or of legal rights, power or functions—all in supposed conformity to the democratic and equal principles of our government. It is in pursuit of this absurd policy, that the doctrine has been insinuated into political and judicial thought, that corporations have the same constitutional rights as natural persons, and in addition thereto the distinct powers and immunities peculiarly incident to corporations. We have had a veritable riot of corporate promotion extended to all parts and local jurisdictions in the country, and it may not as yet be known how soon the separate states will undertake to remedy the abuses

of the corporate privilege along the lines laid down in New Jersey. Of course every state may regulate its own domestic corporations, as also those foreign corporations which it admits by its license to do corporate business within its territorial jurisdiction.

But the problem of monopoly is a federal problem. The products of monopoly pass freely in interstate commerce immune from possible prohibition by the separate states. The trusts trade in many states where they have no considerable tangible property, and wherein they do not file their articles of incorporation or obtain a state license to do business. The profits of such trade are withdrawn from the states, the labor and consumption of whose people sustain and contribute to the same and which profits in turn can not be subjected to contribution in taxes or otherwise for the benefit of the communities which contribute to and produce them.

Monopoly of Profits.

It may be laid down as fundamental that the ulterior motive of monopolistic combination is the engrossment and monopolization of profits. The business of the country in any particular commodity has an ascertainable volume, commensurate with the national consumption of that commodity. The production and distribution of such a commodity requires the employment of stock invested in industrial plants and in sustaining the circulation of such commodity to the consuming markets. The ability of a corporation to monopolize such production and trade is in direct proportion to its capital, that with which it may purchase industrial property or effect by combination the same result. As stated above, the prime object of all such combination, either by purchase or conspiracy, is the engrossment and monopolization of the profits of the trade and the protection of these profits by the exclusion of others from competition or participation in the trade.

Now, the marvelous industrial system of the United

States is stimulated and encouraged by the duties on importations which discriminate against foreign products in the domestic market. This is the traditional economic policy of the country. And it would be manifestly impolitic as proposed by some extremists to establish a free trade policy which would exempt foreign producers from taxation on the consumption of their products, and lay direct burdens of taxation on domestic industry in its stead. This would be a reversal of the protective policy—with the burden on the home producer and the favor for the foreigner.

There is a tendency in all healthful industry toward monopoly—the employment of profits for the engrossment of trade. The tariff stimulates the industry—the profits of industry are used to promote engrossment which when accomplished seeks self-protection in unlawful competition and conspiracy to maintain exclusive advantages in the trade. And the ability of such combinations for monopoly is in direct proportion to the size of the corporation and the surplus of capital or stock available for this purpose. Yet, it were chimerical to attempt to directly limit by law, either the amount of stock a corporation may employ or the amount of its profits, or the proportion of its profits to the principal or capital amount of its stock. Such measures would create an unwise hindrance to industrial competition, activity and development.

The conventional rate for the hire or use of money may very well be limited by law as the payment in such cases is a contractual obligation guaranteed by the promise of the borrower and often secured by the pledge of property. If the lender may recover at the law, it is right that he should only recover the principal and a reasonable relative amount for the hire or use of the money loaned. But the person who ventures his money or stock in an industrial undertaking may not recover at the law his stock or his profits, he carries the risk incident to his venture,—he is not secured in the return of his stock or of his profits by any conventional or contractual undertaking.

He must take the risks of the venture, depending on his good judgment and capacity in a field in which he should be equally free with others to compete for the gains of enterprise. And there can be no freedom of competition unless there is equal freedom of competition, just as men cannot be really free unless they are equally free, at least in so far as their relations are regulated and governed by paramount laws.

Now both the hire of labor and the hire of capital employed in industrial enterprise must be paid out of the profits of the enterprise. If both labor and capital are hired, the enterpriser pays the hire in guaranteed and stipulated sums as the wages of labor and the interest of capital, which "interest" is precisely the stipulated and guaranteed share or interest of the capitalist in the profits of the enterprise in which his capital is loaned or employed. If the capitalist, instead of lending his stock for a stipulated interest in the profits, ventures his capital in the business, he then divides the profits of the enterprise in proportion to his share in the capital employed in the enterprise. If a laborer by himself or in partnership with others hire capital or stock to employ in business, he may pay the hire of the stock out of profits and divide the remaining profits to himself and associates as the wage and reward of labor. Labor may employ capital or capital may employ labor—more frequently it is the enterpriser who hires and employs both and pays the hire of capital and of labor as interest and wages out of the profits of his enterprise, the enterpriser taking to himself the residue of profits as his own reward.

And it may be said here, in passing, that one of the most immoral of prevalent financial practices is the indefinite payment of usury on funded debts representing useless and long-since dissipated capital. It would be an intolerable condition if a great milling trust should, at an early day, have absorbed all the grist mills of the country and as these mills were abandoned to depreciation and decay, the trust should have issued new capital for all the

new mills that have been built, and then should have insisted on profits paid in the price of bread, for distribution as dividends on the capital represented by all the abandoned mills scattered over the country. And yet such is the manifest tendency of sustained monopoly in any branch of industry. Of the same nature of sunken and dissipated capital of no present employment in the industry of the country and yet entailing the payment of usury out of the labor of the people are the bonds and funded debts incurred in the wastes and dissipations of war. Such debts should be discharged by payment and thus compel the holders of the same to look to the rewards of enterprise and of industry rather than to the patrimony of the government for the preservation and augmentation of such capital. The payment and retirement of such debts would be a great stimulus to industry and wealth in the country. There ought to be a limitation to the cumulative burden of spendthrift debts from one generation to the next—debts secured not by the estate of the debtors but by the servitude of succeeding generations of men.

Watered Stock.

The confusion in the public mind of dividends of profits to shares of stock with conventional "interest" or rent on bonded obligations has largely contributed to the facility of exploitation and deception of innocent speculators in so-called watered stock. A bond representing a principal obligation expressed in a definite sum of money together with a contractual engagement to pay hire or interest at a certain rate per centum on the capital sum is one thing—shares of stock represented by certificates of a nominal and expressed money value are with respect to such indicated value of little more signification than if they were obvious counterfeits of government currency. They are only certificates of the ownership of a certain number of aliquot parts or shares of the capital stock and the essential value of the certificate is in its character as a

muniment of title to the specified number of the thousand or other number of equal shares into which the stock of the corporation is divided, which carries the right to participate in dividends of profits, in the proportion which the number of shares indicated by the certificate bears to the whole number of shares into which the stock is divided. There is no obilgation to pay dividends—the denominational money value impressed on such certificates is in no sense a capital sum upon which conventional interest is to be paid, nor is it usually in any respect a reliable index of the value of the stock. It were well for the public protection if such ostensible indicia of value were to be prohibited from imprintment on certificates of shares of stock in industrial corporations, for in this practice, in part at least, consist the evils of stock watering—doubling up the number of shares of indicated value and thereby increasing the ostensible capital and the number of certificates for jobbing purposes. It is difficult to see what can be done by law to protect those who "invest" or have invested in such "paper" or "securities" as they are euphoneously called. Certainly the government is under no moral or political duty to protect such "investments," howsoever innocently made. These "investors" simply venture their money. They do not secure themselves by contractual engagements for the return of either principal or interest. They usually have no intention of participating as stockholders in the direction and management of the corporation in which they buy shares of stock. The directors in any event will not allow them more as dividends than the conventional rate for the hire of money. They have other uses for the surplus. If such "investors" desire to loan their money they should take the bond of the borrower, and it is of just such bonded loans that the greater part of actual industrial capital is composed.

The capital stock of any industry is constantly changing in amount and value. There is accumulative depreciation which if not repaired will wear out and consume such capital. Not only is the capital which is no other than

the industrial property, equipment, and money used in the business, subject to the depreciation caused by use and decay, but its value also to the stockholders, may be greatly impaired by the encumbrance of debts contracted in the course of business. All of these things directly affect the value of aliquot parts of the stock represented by stock certificates. But the value of shares of stock is more directly fixed in the market by the earning capacity of the corporation, and this capacity depends not alone on the intrinsic value of the actual stock, but quite as much upon the efficiency of the business as a going concern. The extent and steadiness of its trade, the physical state of its property, the skill and efficiency with which it is managed, the personnel of its working force and directorate are all important factors in the earning capacity, none of which factors, however, are or can be indicated by the nominal value imprinted on the shares as represented by certificates. Stock is "watered" to conceal the true proportion of profits to capital expressly to deceive the consuming public, but there obviously can be due appreciation of shares in the market without their multiplication or deceptive description in order to excite speculation. Because of the constant and cumulative depreciation of stock and variation both in conditions of production and of the demand of particular markets, all of which inhere in the nature of industrial enterprises, any attempt by law to regulate or limit profits based upon "physical value" or "actual investment" must prove abortive, and is a pursuit of an absurd and fatuous policy.

The matter of the aerated, watery or solid character of stock employed in business is no concern of the government except as it may prevent representations of the "par" value at which beautifully engraved stock certificates are to be exchanged for the money of the "investing" public. If one should brand his goods as a certain quantity of money no one would think the goods were money—yet there are those, and their tribe is many, who think that when paper is stamped as money, it is money, at least ex-

changeable at par for money, and the constitution protects all such against restraint of the right to freely trade, spend and alienate their property. Wind and water may be legitimate agencies of industry. There are veritable windmills in Kansas, and in Connecticut there are incorporated water mills in which one may doubtless purchase shares of stock, but these as yet have not been adapted to the fabrication of steel.

Now, the government cannot compel a man to venture his money or property in the seeking of the gains of business—yet if property be not employed it is consumed by the decays of time. Stock may only be conserved and augmented by its employment in the processes of production and reproduction. And the rewards of growth and wealth in stock are the incentive to its employment in the enterprises of business.

And men must be equally free to engage in the pursuit of and to compete for the gains of business; that is to seek for these gains in common though not necessarily in company with others—and that is all there is to competition. And all this is for the supply of the consumption of men and the business is limited by the volume of this consumption. There are certain advantages which naturally pertain to those who are established in the trade, with which it is difficult for the new adventurer to compete, except as those advantages are diminished by decays and variations of time. And the world is covered with the ruins of decayed industry, to which there has been no succession other than the adverse succession of competitors. And this is the order of the natural world.

Proper Units of Integration.

The most natural integration of competing units is exemplified by the unified growth and integration of population in our cities and the competition of cities for the attraction of new population. And there is nothing of concert or conspiracy here, nor is such possible. It is believed

that the distribution of goods from trade centers to tributary territory or the jobbing trade, as it is called, is presently exercised on the principles of free competition honestly pursued as to both prices and service, all to the highest benefit of the consuming trade. In other industries, as in the jobbing trade, it is believed that there is no great danger in integration at industrial centers, if only the competition between such centers shall be maintained. This would seem to promise the highest economy of production and efficiency of distribution.

There is no economic objection to the size of the steel plant and appurtenances at Gary, Indiana, but there is no economic good in the integrated control by the United States Steel Corporation of the dominating plants at Pittsburg in Pennsylvania and at Birmingham, in Alabama, and of the hundred and thirty odd other plants scattered over the steel producing area of the United States. Nor is there justification in morals or economy for the confederation of the Carnegie Steel Company, the Illinois Steel Company, the National Tube Company, the American Steel & Wire Company, the American Sheet & Tin Plate Company, the Sharon Tin Plate Company, the American Bridge Company, the Union Steel Company, the Indiana Steel Company, and the Tennessee Coal, Iron, & Railroad Company, into an integrated fiscal and securities corporation for the control of markets, the fixing of prices, the engrossment, collection and distribution of profits and the fastening upon the consuming public in the price of steel of fixed capital charges to provide revenues on the funded capitalization of its abandoned and depreciating plants. Such combination is not essential to either economy of production or of distribution to the territory tributary to the centers of steel production in the United States.

The Means of Disintegration.

Now, what of the remedy for these conditions in the industries of the United States? No mere private litigious right to compensation for damage done nor injunction for

the prevention of damage threatened will suffice. Indeed these are public, not private wrongs, which call for political prevention rather than compensatory or vindicatory punishment. In our free country the potentiality of competition must be maintained, and the only way to maintain the potentiality of competition is to take away the potentiality of the trusts to unduly interfere with competition. And this cannot be left to good intentions—the potentiality of the trusts for harm must be prevented, and this not by judicial process acting in particular cases, but by political means acting automatically and generally in the field of industry.

The American tariff stimulated the establishment of the great American steel industry. The prosperity of that industry has produced a constant tendency toward engrossment and monopoly for the more complete integration and protection of which the United States Steel Corporation was created. The profits of this corporation for the fiscal year ending December 31st, 1910, in round numbers amounted to one hundred forty-eight millions of dollars, distributed as follows:

Depreciation funds and sinking funds for bond liquidation	$ 30,000,000.00
New plants and construction	15,000,000.00
New construction at Gary, Indiana	10,000,000.00
Interest on bonded indebtedness	30,400,000.00
Dividends on the preferred stock	25,200,000.00
Dividends on the common stock	25,400,000.00
Surplus of profits	12,000,000.00
	$148,000,000.00

The gross revenues of the United States Steel Corporation for the fiscal year ended December 31st, 1910, were $703,961,424.41 (Ninth report of United States Steel Corporation, p. 34). The total revenues of the United States government for the fiscal year ended June 30th, 1910, were

$675,511,715.02 (Annual report of the Secretary of the Treasury on the State of the Finances, 1910, p. 26). It was claimed in 1911 that the Steel Trust up to that time had expended more than $400,000,000 of profits in new construction and replacements in its plants. There is no objection to such application of the surplus profits of industry, especially in cases where the real capital is represented by bonded indebtedness which, after reception of its stipulated interest in the profits, has no right to participate in the further appropriation or dividend of the same.

Now the tariff of duties on imports is to be a permanent factor in the fiscal policy of the United States, as it relates to the collection of the federal revenues. And the impost on importations has a close relation by nature to the excise from domestic production and consumption and to the duty on business—all of which are expressly included within the power of Congress as provided in Article I, Section 7, of the Federal Constitution:

> "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

The power to lay duties, imposts and excises gives to Congress the most direct, intimate and comprehensive political power over the industries and commerce of the United States, all in consistent harmony with the intent and plan of the Constitution in delegating to Congress power over the interstate and international relations of the country. Land and labor may be subjected to direct capital or capitation taxes. Both are fixed as to locus and residence, and on them directly operates the essential political jurisdiction of the separate American States. But the business of the country freely permeates all of its parts without regard to state territory or jurisdiction. The profits of industry are drawn from the labor of all the people, and should be taxed for the benefit of all the people, as may only be done by Congress in the exercise of the

political powers of the federal government. The nominal capital and bonded capital obligations of American corporate industries are in excess of eighty-five billions of dollars. The annual profits of American business are in excess of five billions of dollars—all the product of the annual labor and stock of the country withdrawn from all its parts to the larger financial centers for distribution and absorption. The states are, in the nature of things, powerless to lay the profits of this gigantic industry under contribution to the public revenues—though the people of all the states contribute of their labor and consumption to the creation of these concentrated profits of American industry. The distribution of profits in dividends and interest in January, 1913, at New York City, was reported at $244,264,500—not the product of the state or city of New York but the product of the consumption and industry of the American people. And how may this annual wealth be subjected to the regulation and sustenance of the government? By a federal tax on the profits of business—a graduated tax on the profits of business which shall fall with the greater weight on the monopolies and trusts and thus handicap them in their competition with the smaller and independent units of industry. If a graduated tax of one per cent on the first million and a cumulative tax of one-tenth of one percent on each of the subsequent and suceeding millions were laid on the hundred and more millions of annual profits of the Steel trust, there would soon be a vacation and abandonment of the accounting and disbursing offices of the United Steel Corporation at 51 Newark Street, Hoboken, New Jersey, and this without diminution or cessation in the production of steel. The obsolete plants would be abandoned to decay, the newer and efficient ones would be operated as independent units. New ventures of capital of sufficient magnitude for economic production could then be made without disturbance by conspiracy or combination to drive them out of the market. The price of steel would adjust itself to a proper relation to productive costs, and healthful and sound conditions in the industry

would be promoted. There should be no limitation of the amount of revenues which may be appropriated to the wages of labor or to the replacement and arrest of depreciation, nor should account be taken of capital in laying the tax. Under these conditions there would be a tendency toward readjustment of the relative interests of bondholders and stockholders in the profits of the industry.

Congress can fashion the graduation of the tax on profits to meet the conditions in separate industries, and the only limitation on the exercise of this power is that the duty in any particular industry shall be uniform as to that industry throughout the United States. There could be a graduated general tax on the profits of business or a particular graduated tax for certain industries as the exigencies of economic and political conditions may require. But like the tariff, the application of such a tax would call for the most unselfish, sagacious and patriotic endeavor by statesmen of liberal and composed views.

The principle to be applied is epitomized in this statement which was prepared for presentation to the Committee on Resolutions of the National Democratic Convention at Baltimore, June, 1912.

> **"For the disintegration of monopoly and the restoration of equality in competition, we favor the imposition of a graduated tax on the profits of business which shall lay discriminating burdens on trusts and monopolies and thus increase the competence and ability of those who efficiently employ smaller capitals to compete with the monopolies in the markets of the country. The tax is to be laid on all profits annually available for distribution, either as interest on borrowed capital, or as dividends on shares of stock."**

It is submitted that such a policy would be in harmonious consistence with the fiscal powers conferred upon Congress by the federal Constitution, and would be a proper supplement and complement to the established fiscal policy of the country.

September 1, 1913.

A Competitive Tariff.

The American people by a preponderance of political opinion are in favor of a **tariff for revenue** with the accent on tariff. This policy is supported by the best political experience and the traditions of the country. The confusion of ideas on the tariff has been due, in somewhat large measure, to the infusion of Cobdenism and other exotic notions into American political thought, all of which has rendered more difficult the discernment and evolution of the true American tariff policy.

Out of the years of controversy, there has finally come a notably clear notion of what is denominated a **competitive tariff** which does not exclude foreign importations, yet gives the American producer a preference in the American market. If duties are so high as to prevent importations, there is no more of revenue than if there were free trade. Both the extreme doctrines of prohibition and of free trade are equally inconsistent with the imposition of duties on imports to provide revenues "to pay the debts and provide for the common defense and general welfare of the United States." (Constitution of the United States, Article 1, Sec. 7.)

But the tariff of duties on importations, or the impost as it is technically called, is in its nature a tax which discriminates against foreign goods in the American market; and in this sense the tariff, any tariff of whatsoever denomination, is protective. A **revenue** tariff of twenty per cent is precisely the same as a **protective** tariff of twenty per cent both as to its effect as a regulation of foreign trade and as a preferential discrimination in favor of the domestic producer in the home market. There have been those who have perceived this from the very in-

ception of the fiscal system and policy of the government under the Constitution.

In the Tariff Bill reported by James Madison out of the Ways and Means Committee of the House of Representatives in 1792, the American tariff policy is thus stated in the preamble to the bill:

"Whereas it is necessary for the support of the government, for the discharge of the debt of the United States and the encouragement and protection of manufactures, that duties be levied on goods, wares, and merchandise imported, etc."

That Madison entertained these views throughout his political career is indicated by his executive message to Congress of February 20th, 1815, wherein he urged "deliberate consideration of the means to preserve and protect the manufactures which have sprung into existence and attained unparalleled maturity throughout the United States during the period of the European wars."

Thomas Jefferson also recognized that the embargo on foreign commerce incident to the war between England and France and also the interruption of foreign commerce during the war of 1812 had resulted in a great impetus to domestic manufactures and fabrication, and it was with gratification that Jefferson recorded these observations.

In a letter to the Convention of Democratic-Republican Delegates from the townships of Washington county, Pennsylvania, written from Monticello, February 21, 1809, Jefferson said:

"It is true that the embargo laws have not had all the effect in bringing the powers of Europe to a sense of justice, which a more faithful observance of them might have produced. Yet they have had the important effects of saving our seamen and property, of giving time to prepare for defense; **and they will produce the further inestimable advantage of turning the attention and enterprise of our fellow citizens, and the patronage of our State legislatures, to the establishment of useful manufactures in our country.** They will have hastened the day when an equilibrium between the occupations of agriculture, manufactures and commerce, shall simplify our foreign concerns to the exchange only of that surplus which we cannot consume for

those articles of reasonable comfort or convenience which we cannot produce."

There need be no hesitancy in admitting that the impost and other hindrances to importation have been a remarkable stimulus to domestic industry in the United States and that our most notable statesmen have acknowledged this fact.

But the tariff has, by its manufacturing beneficiaries, been brought to great abuse and converted into a privilege which these beneficiaries would make a vested right in the policy of the government. We have had a perfect fruition of the industrial utility of women and children as projected by Hamilton when he said:

"It is worthy of remark that in general women and children are rendered more useful and the latter more early useful by manufacturing establishments than they would otherwise be. Of the number of persons employed in the cotton manufacturies of Great Britain, it is computed that four sevenths nearly are women and children of whom the greatest proportion are children and many of them of very tender age."

It may also be remarked that "free raw materials" is usually an accompaniment of a distinctively manufacturers' tariff and while it may be said that the free admission into our markets of foreign lumber, coal, iron, petroleum and other natural materials would be a conservation of our own resources and reserves of such materials, this would not be true in the same sense of the free admission into our markets of the raw produce of foreign agriculture, to the exclusion of an equal quantity of the raw produce of American agriculture. Adam Smith spoke truly of the manufacturers, when he said:

"They are as intent to keep down the wages of their own weavers as the earnings of the poor spinners; and it is by no means for the benefit of the workman, that they endeavor to raise the price of the complete work or to lower that of the rude materials."

But the vaunted glories of the protective tariff as also its infamous injustice partake of the exaggeration natural to extravagant partisan views. And there are partisan

views of the tariff which are not to be harmonized by any tariff commission which seeks to apply a partisan theory to the adjustment of the tariff—certainly not by the application of the theory of the protection of profits which received its frankest expression in the platform adopted by the Republican party at Chicago in 1908, a servile fidelity to which was the undoing of the administration of the late President William H. Taft:

"In all tariff legislation, the true principle of protection is best maintained by the imposition of such duties as will equal the difference between the cost of production at home and abroad together with a reasonable profit to American industries."

No, it is revenue, and not protection of profits which must be the preponderating principle in the laying of duties, imposts and excises, and the revenue principle requires a competitive tariff to the exclusion of the prohibitions of a distinctively protective tariff. Yet, as one who has been brought up in the school of partisan Democratic politics, I may be permitted to say that I am in favor of a tariff for revenue as against any system of direct internal taxation of land or labor,* because the tariff on importa-

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*The proponents of the federal income tax in its direct personal or capitation form, would justify the tax upon the ground that it is a tax upon invested wealth. But a tax upon the wages and rewards of personal labor is not a tax upon the profits of wealth. For example: two young men each inherit invested property or stock, producing an annual income to each of them in the sum of $3,000. The one does no useful work but expends his income in prodigal living. He renders no service to society and consequently earns nothing as wages or salary of labor. The other young man enters some useful vocation in which he earns for personal service an annual salary of $3,000. Under the provisions of the income tax law, the first young man who does no useful work or labor is exempt from the tax while the other young man who does useful work and labor is in effect penalized by a requirement to pay income tax on $3,000. It were certainly more equitable and politic to require each of these men to pay on $3,000 received by each of them as income from invested property and to apply the exemption exclusively to money received as the wages of personal industry, service or labor.

Then, too, it is to be doubted that there is any justification in sound policy for a federal tax on land or upon the rents and issues of land. The single taxers are pushing their extreme doctrines to the point of practical absorption of the rent of land by confiscatory rates of taxation. Land tax rates in many localities now range from 3 per cent to 4 per cent of the ascertained capital value of land. The

tions does give a preference to the American producer in the home market. And in a commercial view the domestic trade and the markets which accomodate it should receive the patronizing care of our best statesmanship, for it is the most valuable and profitable of all our commerce. This fact was stated in 1776 by Adam Smith and Smith is currently received as the chief doctor of the free traders. Adam Smith says in his Wealth of Nations:

"After agriculture, the capital employed in manufactures puts in motion the greatest quantity of productive labor, and adds the greatest value to the annual produce. That which is employed in the trade of exportation has the least effect of any of the three. * * * Though the returns, therefore, of the foreign trade of consumption should be as quick as those of the home trade, the capital employed in it will give but one half the encouragement to the industry or productive labor of the country. * * * The returns of the foreign trade of consumption seldom come in before the end of the year, and sometimes not until after two or three years. A capital employed in the home trade will sometimes make twelve operations, or be sent out and returned twelve times, before a capital employed in the foreign trade of consumption has made one. If the capitals are equal therefore, the one will give four and twenty times more encouragement and support to the industry of the country than the other. * * * The capital therefore employed in the home trade of any country will generally give encouragement and support to a greater quantity of productive labor in that country and increase the value of its annual produce more than an equal capital employed

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tax on land should upon any sound theory be paid out of the rents and issues, but cases are not of infrequent occurrence where land taxes are paid out of the earnings of labor and of other invested capital. Certainly the taxation of land and of its rents and issues, is properly a matter of exclusive state policy with which the federal government has no proper concern. For a proprietor of land to pay of the income from his land, state and municipial taxes at high rates and then in addition to this to pay a federal tax on the rents and issues of the same land is palpable double taxation.

The annual net produce is the source of income to all the people. As Adam Smith puts it:

"The whole price of the exchangeable value of the annual produce must resolve itself into the same three parts and be parceled out among the different inhabitants of the country, either as the wages of their labor, the profits of their stock, or the rent of their land. * * * The whole value of the annual produce of the land and labor of every country is thus divided among and constitutes a revenue to its different inhabitants."

in the foreign trade of consumption. * * * The riches, and so far as power depends on riches, the power of every country must always be in proportion to the value of its annual produce, the fund from which all taxes must ultimately be paid. **The great object of the political economy of every country is to increase the riches and power of that country."***

Now, is there not some common ground upon which those who believe in a tariff can adjust and accomodate their differences for incorporation into a permanent American tariff policy? Has not the difference between revenue and protection been worn so threadbare that it presently offers no real or substantial basis for unyielding political sectarianism in relation to the fiscal policy of our country?

The revenue and protective tariff doctrines have their derivation from and most authoritative statement in the celebrated reports to Congress of Robert J. Walker and of Alexander Hamilton, both distinguished Secretaries of the Treasury. Hamilton faced the problem of the establishment of public credit and the funding of the public debt; Walker, the providing of public revenues for the orderly conduct and administration of the government, the persistent execution of the plans of Albert Gallatin, another great Secretary of the Treasury, having theretofore accomplished the payment of the public debt. As the controversy between the revenue and protection schools, resolves itself primarily into an issue as the **rate** for a proper duty on imports, we may examine the Hamilton and Walker reports to discover the basis for the differences which divide these schools of fiscal politics.

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*Domestic industry in the United States could be stimulated by the compilation and publication of statistical information respecting the movement of commodities in commerce between particular localities of production, fabrication, distribution and consumption together with data as to the quantity, nature, value and cost of carriage of commodities moving to and from particular consuming communities and centers of distribution. Data to be incorporated into such statistics could be elaborated from the reports of railroad carriers to the Interstate Commerce Commission and could be arranged, compiled and published by the Department of Commerce. Such statistics would be of valuable application by Chambers of Commerce in the American cities and commercial centers.

Alexander Hamilton in his Report on Manufactures, Philadelphia, 1798, said:

"There are grounds to conclude, that undertakers of manufactures in this country can, at this time, afford to pay higher wages to the workmen they may employ, than are paid to similar workmen in Europe. The price of foreign fabrics in the market of the United States, which will, for a long time, regulate the price of the domestic ones, may be considered as compounded of the following ingredients: the first cost of materials, including the taxes, if any, which are paid upon them, where they are made; the expenses of grounds, buildings, machinery and tools; the wages of the persons employed in the manufactory; the profits of the capital or stock employed; the commissions of agents to purchase them where they are made; the expense of transportation to the United States including insurance and other incidental charges; the taxes or duties, if any, fees of office, which are paid on their exportation; the taxes or duties, and fees of office which are paid on their importation.

"As to the first of these items, the cost of materials, the advantage upon the whole is at present on the side of the United States; and the difference in their favor must increase, in proportion as a certain and extensive domestic demand shall induce the proprietors of the land to devote more of their attention to the production of these materials. It ought not to escape observation, in a comparison on this point, that some of the principal manufacturing countries of Europe are much more dependent on foreign supply for the materials of their manufactures, than would be the United States, who are capable of supplying themselves with a greater abundance, as well as a greater variety, of the requisite materials.

"As to the second item, the expense of grounds, buildings, machinery and tools, an equality at least may be assumed; since advantages, in some particulars, will counterbalance temporary disadvantages in others.

"As to the third item, or the article of wages, the comparison certainly turns against the United States; though, as before observed, not in so great a degree as commonly supposed.

"The fourth item is alike applicable to the foreign and to the domestic manufacture. It is, indeed, more properly a result, than a particular to be compared.

"But, with respect to all the remaining items, they are alone applicable to the foreign manufacture, and, in the strictest sense, extraordinaries; constituting a sum of extra charge on the foreign fabric, which cannot be estimated at less than from **fifteen to thirty per cent** on the cost of it at the manufactory.

"This sum of extra charge may confidently be regarded as more

than a counterpoise for the real difference in the price of labor; and is a satisfactory proof that manufacturers may prosper, in defiance of it, in the United States."

Robert J. Walker, in his Report on the Tariff, Washington, 1845, said:

"That no duty be imposed on any article above the lowest rate which will yield the largest amount of revenue.* * * That the duty should be so imposed as to operate as equally as possible throughout the Union, discriminating neither for or against any class or section. * * *

"While it is impossible to adopt any horizontal scale of duties, or even any arbitrary maximum, experience proves that, as a general rule, a duty of **twenty per cent** ad valorem will yield the largest revenue. There are, however, a few exceptions above as well as many below this standard. * * *

"Stability, both in the tariff and the currency is what the manufacturer should most desire. Let the tariff be permanently adjusted by a return to reasonable and moderate revenue duties, which, even when imposed truly and in good faith for that purpose, will yield sufficient advantage to afford reasonable profits; and let this permanent system (and none other can be permanent) be established and accompanied by a stable currency, and the manufacturer in a series of years, will derive the greatest benefit from the system. * * *

"No prejudice is felt by the Secretary of the Treasury against manufactures. His opposition is to the protective system and not to classes or individuals. He doubts not that the manufacturers are sincerly persuaded that the system which is a source of so much profit to them, is beneficial also to the country. He entertains a contrary opinion, and claims for the opponents of the system a settled conviction of its injurious effects. Whilst a due regard to the just and equal rights of all classes forbids a discrimination in favor of the manufacturers by duties above the lowest revenue limit, no disposition is felt to discriminate against them by reducing such duties as operate in their favor below that standard. Under revenue duties it is believed they would still receive a reasonable profit—equal to that realized by those engaged in other persuits—and it is thought they should desire no more, at least through the agency of governmental power. Equal rights and profits, so far as laws are made, best conform to the principles upon which the Constitution was founded, and with an undeviating regard to which all its functions should be exercised—looking to the whole country and not to classes or sections."

Now, Hamilton, the protagonist of protection, argu-

ing from the premise of primitive industrial conditions in America, on the difference-in-cost-of-production theory, found that a protection of from fifteen to thirty per cent over the cost of foreign manufacture, in which was included the expense of transportation and insurance, was adequate for the profitable maintenance of manufactures in America, and Walker, in his statement of the ideal revenue tariff, found that the most successful average revenue rate was **twenty per cent** ad valorem. Hamilton's average would be **twenty-two and one half per cent** from which should be deducted charges for carriage and insurance. Surely these theories are not so inconsistent as to prevent their composition into a tariff of moderate and permanent duties on imports.

There remains a difference of method as to the levy of the revenues from the impost on importations. Mr. Walker favored ad valorem duties and those who profess the protective theory favor specific duties. This is a practical question, to be properly determined in the light of the experience of the Treasury department as it relates to the collection of the revenue. The settlement of this question should be approached without prejudice—certainly without passionate partisan attachment to, or antipathy against either method. There are strong practical considerations in favor of specific duties, particularly as to commodities valued by weight and bulk. The ad valorem rates seem best for highly finished articles of merchandise, the principal value of which consists in the labor and handiwork expended in their creation and production. It may be that, generally speaking, such articles as seek a market at prices fixed in our ports, would fall in the first class and such as are purchased in and consigned on invoices from foreign countries at prices fixed in foreign markets would fall within the latter class. Wool, wheat, and sugar are within the first class, and the finished textiles and fabrics of the useful arts are within the latter class. However this classification is a mere casual notion which is only suggested as a possible basis for the compo-

sition of both ad valorem and specific duties in the tariff system.

The solution of the tariff question is a task for statesmen of liberal and composed views which shall exclude the predatory animus which has scandalized American tariff legislation since the repeal of the Walker tariff. Abraham Lincoln had this view when he said at Pittsburg, on February 15th, 1861, while on his way to the Presidential inauguration at Washington:

"Assuming that direct taxation is not to be adopted, the tariff question must be as durable as the government itself. * * * I therefore recommend to every gentleman who knows he is to be a member of the next Congress to take an enlarged view, and post himself thoroughly so as to contribute his part to such adjustment of the tariff as shall produce a sufficient revenue, and in its other bearings, so far as possible, be just and equal to all sections of the country and classes of the people."

The tariff cannot be taken out of politics. It is the most vital question in our federal politics and can only be properly settled in conformity to the soundest sense and political judgment of the American people.

June 1, 1913,

A New System of Federal Banks.

The Congress of the United States should authorize the creation of one Federal Bank in each of the larger cities and clearing centers of the country, the capital to be at least one million dollars with no limitation on the amount which may be subscribed in excess of this sum—subscriptions to be open to the public without reservation or limitation to the end that the exclusive franchise of the bank in any particular city shall not become a monopoly in the hands of any particular cabal of bankers. Subscriptions up to one million dollars should be paid at par at time of organization and subscriptions subsequent to organization should be paid at par plus aliquot part of the surplus, the figure to be determined by the dividend of the capital and surplus by the number of then outstanding shares of stock. There should be no restriction as to the cities in which the banks may be organized—only that the capital be at least one million of dollars and that the directors reside in the city where the bank is organized.

Rural federal banks might be permitted with less capital in smaller cities but these should become by law branches of the regular federal banks which should hold the reserves of the branch banks to which they severally are related. These new federal banks should become the fiscal agents of the federal government for the collection, disbursement and transmission of public moneys. They should be required to hold adequate legal reserves of gold. The present system of national banks should be abrogated —the national banks themselves in any city should become merged into the new federal bank or become branches of it or take out state charters as they may severally elect.

There should be but one branch bank in any city except the city where the federal bank is organized in which a larger number of branches may be allowed. In the matter of the federal charter a preference in organization may be accorded to the oldest or largest national bank in any particular city, in the discretion of the Secretary of the Treasury.

Of the legal reserves of these federal banks, all that part not held in vault should be deposited in gold in the treasury of the United States against which gold certificates should be issued which would be available to the banks for legal reserve requirements as well as gold coin which they may hold in vault.

The federal treasury should maintain at Washington or New York a federal clearing house and discount bank under control of a federal board with which all the federal banks should carry balances to be drawn upon for New York and domestic exchange and in which surplus funds could be deposited available for expeditious transmission on the call of the depositing banks, or for the payment of accepted bills drawn by one federal bank on another in the system.

From these concentrated deposits extension of funds by the discount of bills could be made by the federal board to federal banks having the most pressing legitimate territorial need for the same. The federal board should be an agency of the government and have no relation to any stock corporation, thus insuring consistent and intimate relations between the federal banks and the treasury which is proper in view of the fact that the banks would be legally constituted fiscal agents of the government. Deposit of securities to cover extensions of credit and funds should be required pursuant to regulations made by the federal board.

The only ground upon which Congress may create banking corporations is to provide fiscal agents for the collection, disbursement and transmission of government moneys, and there is no good reason why there should be

more than one fiscal agent in any one city. The erection of one strong federal bank in each commercial center to concentrate banking power and local reserves would combine local direction and control with concentration at important clearing centers. By this means the 7,500 national banks would become integrated and unified into strong financial institutions with centers in such cities as Boston, New York, Philadelphia, Baltimore, Richmond, Atlanta, New Orleans, Buffalo, Cleveland, Detroit, Chicago, Minneapolis, Pittsburg, Cincinnati, Louisville, Saint Louis, Dallas, Denver, Kansas City, Omaha, Salt Lake, Los Angeles, San Francisco, Portland, and Seattle, to which other cities might be added whenever a federal bank with an initial paid up capital of one million dollars were organized in any such city.

The association of these federal banks in a clearing house at Washington or New York for the clearance of domestic bills drawn by one federal bank upon another in the system, together with a discount bank to facilitate advances and exchanges, would take care of domestic federal clearings and would gradually absorb for the system of federal banks the domestic exchange business of the country. If the federal banks had each a representative upon a Clearing House Commission it would give the federated banks administrative control of their concentrated New York balances, thus providing a discount market for domestic bills, bearing the endorsement of a federal bank, to the exclusion of loans to facilitate operations on the New York stock market.

It is presently estimated that the clearings through the New York banks are about two-thirds of the national clearings; that is to say, the clearings of New York are twice the aggregate clearings of all other American cities. This is because all the other American cities, to a very large extent, clear their domestic exchange through New York. The creation and maintenance by the system of strong federal banks having an augmenting and unlimited capital, of a Federal Clearing House at Washington

or New York under the patronage and visitation of the Treasury Department of the United States, would restrict New York banks more nearly to the accommodation of New York business and would otherwise co-ordinate and federate the banking facilities and resources of the country into a truly federal system.

Federal Currency.

American fiscal experience is against paper bank currency. Our banks are banks of deposit and discount, not banks of issue for circulating bills. Even the states by the Federal Constitution are forbidden to emit bills of credit. What we in America need is neither a Canadian, nor a Scotch, nor a Continental system of banking, but rather an extension, development and perfecting of the American clearing system,* together with an enlarging discount

*MUNICIPAL CLEARING HOUSES.—Every encouragement should be given to the development of the American clearing system. Local municipal or mercantile clearing houses might permit the registration and deposit of debtor's bills acknowledged by the signature of the debtor and deposited to the credit of the person or firm who had earned the debt by extending credit of money, goods, or labor. The deposit of credit represented by these acknowledged bills of debt would merge and pay bills of debt given by such person and deposited in the clearing house by his creditors. Every thirty days there should be a proscription of petty debtors whose unsecured paper in the clearing house had not been paid, and pnblication should continue until such debtors make payment. Persons whose delinquencies were published could then be refused credit in the mercantile and industrial community, and would have to extend credit of labor or goods themselves rather than seek further credit from others while they should remain on the proscribed list. The dissipation of credit in every city is something tremendous and calls for drastic correction. In one prosperous western city of an hundred thousand population, more than 35,000 actions of law have been brought within the last ten years for the recovery of petty mercantile debts. A recurring public proscription of petty debtors in the newspapers or otherwise would contribute to the creation of a higher sense of public honesty and duty and would stimulate the acquisition and maintenance of personal creditable standing in the community. To facilitate this system every person, firm, or company which extends credit of money, goods, or labor, should thereupon take a bill of debt subscribed by the debtor with the stipulated time and terms of payment. This of course would not apply to cash transactions. Banks never extend credit without taking written evidence of the debt, and if such practice became more general in those who extend mercantile and industrial credits, collection litigation would be much simplified and diminished.

market for legitimate commercial bills. And bankers' bills and acceptances, like those of other mercantile persons, should be redeemed upon maturity by payment in money of the realm and not by the issue of bills of debt to contribute to a cumulative inflation of paper circulation.

Federal currency should be of two kinds: silver certificates in the denominations of 1, 2, 3, 5, and 10 dollars, and gold treasury notes* in the denominations of 20, 50,

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***JEFFERSON ON 16 TO 1.**—Thomas Jefferson and Andrew Jackson believed in hard money of gold and silver coined at the relative value of sixteen to one. When it was suggested, during the recent debate on the Currency Bill in the House of Representatives, that reserves should be of gold and not of gold and lawful money, quite a number of silver populists were at once on their hind legs to protest against the insult of the proposition.

The whole trouble with the double or bi-metallic standard is with the ratio of silver to the gold unit. Congress can no more fix a double standard of value than of weights and measures. Jefferson understood this thoroughly. In his Notes on the Money Unit and the Coinage, he said:

"The proportion between the values of gold and silver is a mercantile problem altogether. It would be inaccurate to fix it by the popular exchanges of a half-Joe for eight dollars, a Louis for four French crowns, or five Louis for twenty-three dollars. The first of these would be to adopt the Spanish proportion between gold and silver; the second, the French; the third, a mere popular barter wherein convenience is consulted more than accuracy. The legal proportion in Spain is sixteen for one; in England fifteen and a half for one, in France fifteen for one. The Spaniards and English are found in experience to retain an over proportion of gold coin, and to lose their silver. The French have a greater proportion of silver. The difference at market has been on the decrease. The Financier states it at present as at fourteen and a half for one. Just principles will lead us to disregard legal proportions altogether; to enquire into the market price of gold in the several countries with which we shall be principally connected in commerce and to take an average from them. Perhaps we might with safety lean to a proportion somewhat above par for gold, considering our neighborhood, and commerce with the sources of the coins and the tendency which the high price of gold in Spain has to draw thither all that of their mines, leaving silver principally for our and other markets. It is not impossible that fifteen for one may be found an eligible proportion. I state this, however, on conjecture only."

In discussing this same question, Jefferson said in a letter written at Paris April 3, 1789:

"I believe all the countries in Europe determine their standard of money in gold as well as silver. Thus, the laws of England direct that a pound Troy of gold, of twenty-carats fine, shall be cut into forty-four and a half guineas, each of which shall be worth twenty-one

100, 500, and 1,000 dollars. These should be clean bills printed from new plates such as proposed by the late Secretary of the Treasury, in order to facilitate the retirement of the existing greenbacks and bank notes which should be taken up by the Treasury in exchange for the new currency.

The silver certificates should be issued in exchange for gold or government bonds as demands shall be made for small currency to supply the requirements of retail trade. The gold notes should be issued in exchange for

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and a half shillings, that is, into 956¾ shillings. This establishes the shilling at 5.518 grains of pure gold. They direct that a pound of silver consisting of 11 1-10 ounces of pure silver and 9-10 of an ounce of alloy, shall be cut into sixty-two shillings. This establishes the shilling at 85.93 grains of pure silver, and, consequently, the proportion of gold to silver as 85.93 to 5.518, or as 15.57 to one. If this be the true proportion between the value of gold and silver at the general market of Europe, then the value of the shilling, depending on two standards, is the same, whether a payment be made in gold or silver. But if the proportion of the general market of Europe be as fifteen to one, then the Englishman who owes a pound weight of gold at Amsterdam, if he sends the pound of gold to pay it, sends 1043.72 shillings; if he sends fifteen pounds of silver, he sends only 1030.5 shillings; if he pays half in gold and half in silver, he pays only 1037.11 shillings. And this medium between the two standards of gold and silver, we must consider as furnishing the true medium value of the shilling. If the parliament should now order the pound of gold (of one-twelfth alloy as before) to be cut into a thousand shillings instead of 956¾, leaving the silver, as it is, the medium of true value of the shilling would suffer a change of half the difference; and in the case before stated, to pay a debt of a pound weight of gold, at Amsterdam, if he sent the pound weight of gold, he would send 1090.9 shillings; if he sent fifteen pounds of silver, he would send 1030.5 shillings; if half in gold and half in silver, he would send 1060.7 shillings; which shows that this parliamentary operation would reduce the value of the shilling in the proportion of 1060.7 to 1037.11."

"The proportion between the value of gold and silver is a mercantile problem altogether. * * Just principles will lead us to disregard legal proportions altogether; to enquire into the market price of gold in the several countries with which we shall be principally connected in commerce and to take an average of them."

These are propositions so obviously sustained in morals and mathematics that one must wonder why they have never penetrated the consciousness of William Jennings Bryan. It is the fluctuation in the market price of silver when measured by the gold unit (and gold is always one or unit), that has destroyed the stability and utility of a given weight of silver as a unit of account, exchange, or estimation of value. Even the populists should understand this in the experience of the years intervening since 1896.

gold or government bonds, and the surplus of gold notes should be retired as received by the treasury in payment of taxes or otherwise so as to facilitate the conversion of outstanding bonds into gold notes with a view to the retirement and payment of the public debt. Warrants on the treasury for the current expenditures of the government could be paid in gold or currency at the option of the holder of the warrant. Appropriations of public money should never exceed revenues, and warrants should always be paid out of revenues. Indeed, revenues should be maintained and rather augmented and appropriations restricted in order to permit the retirement of bills received in the revenue, for the purpose of reducing the public debt, and stimulating the conversion of bonds into bills. The gold notes should not ordinarily be used as bills of credit by the government except as they shall have been received in payment of taxes. The creation of government credits by legislative fiat in the laying of taxes and duties in payment of which treasury notes may be returned, gives these notes a more stable basis than ordinary bank bills, and leaves the bank resources available for current commercial discounts.

For emergency currency the federal board upon application of a federal bank, and the deposit of securities which may include prime commercial paper bearing the endorsement of the applicant bank, may extend to such bank gold treasury notes, the sum extended by the credit to bear interest at a specified rate on the principal sum or any unpaid balance of the same so long as the loan is not repaid by a return of government notes or by payment in gold. This would afford elasticity in the currency without multiplication of species of current paper and keep the currency of uniform kind—gold notes of the United States with proper and efficient means of contraction and expansion of the circulation. The rediscount of prime commercial paper bearing the endorsement of a federal bank could be accommodated by an extension of gold notes, an equivalent amount of notes to be retired on payment of

the paper. Gold should not be used for this purpose. If deposits of gold are made in federal banks, they should take the form of deposits on such security as the Secretary may require, rather than the purchase or discount of commercial paper. It should be the policy of the law to facilitate the deposit and holding of the gold capital and reserves of the system in the federal treasury.

There ought to be no restriction on the application of postal savings deposits for the purchase and retirement of government bonds. There is no way to retire the billion dollars of bonded government debt but to buy it or pay it. Sinking fund schemes are fatuous. The funding of debts by provision of revenues to pay stated interest charges establishes public credit, but will never merge or sink the debt. And public moneys held in idle sinking funds are of neither public nor private utility.

This paper is a general sketch, the suggestions of which would have to be refined and elaborated for composition into a general system.

October 1, 1913.

Outlines for the Organization of Local Government.

"There are two subjects, indeed, which I shall claim a right to further, as long as I breathe, the public education and the subdivision of Counties into Wards. I consider the continuance of republican government as absolutely hanging on those two hooks."—Thomas Jefferson.

Political Divisions.

Divide all the territory of the State, within County boundaries however, into municipalities to which shall be assimilated the township and city governments, the result being a compounding of the townships , and cities into common territorial limits which shall cover all the territory in the counties as the counties cover all the territory in the State.

The method of division of territory among these municipalities to be as follows: In a given county take the centres of population as concentrated in hamlets, villages, towns or cities, and expand the territorial limits outward from these centres until the limits or boundaries meet at convenient lines for local administration.

The municipalities are to be classified or graded into hamlets, villages, towns and cities according to population and the respective powers of each class are to be determined by legislation. Give the municipalities generally control of all local police, including constabulary, sanitation, education, care of paupers, care of local roads and streets and all the functions now exercised by townships and cities and by County Commissioners where the functions of the latter duplicate the powers of cities and towns as at present constituted.

These municipalities are to be given full local government with administration by local elective boards or

commissions* having direct local responsibility to the people. The small municipalities may have their town meeting and the larger municipalities a representative assembly with legislative powers. Ordinances upon petition may be referred to a vote of the people for confirmation or rejection.

Taxation.

In the matter of taxation the municipalities are to have the exclusive power to tax buildings and improvements on land, to lay poll taxes and taxes on occupations and professions, and to license trade and business. The municipalities are not to have the right to tax land except for local improvements abutting on the land assessed, such as taxes for roads, pavements, sewers, water mains and other highway improvements. The people by special election to have the right, however, to lay a tax on land for the erection of permanent municipal buildings and structures.

Land values are to be taxed at a uniform rate throughout the State for the general benefit and use of the State and for the support of the county and state administration. The State treasury is to support the whole judiciary system, the current cost of public education (not including construction of school houses for local or primary schools) and such other appropriations, the benefit of which would be generally distributed over the State.

The result of this arrangement would be that farmers and occupants of agricultural lands would all belong as citizens to their nearest towns and would participate directly in their local government. The taxes presently paid on farm improvements would contribute to the sup-

*The old form of city government constituted of a mayor and aldermen is a relic of mediævalism come down to us from the walled cities of the middle ages when cities were independent bodies politic having no political relations to the feudal social structure by which they were surrounded. But we have no distinctive bourgeoisie or peasantry in the United States, and the cities being but municipal agencies of the State governments, they should be assimilated in government to the form of the counties; that is to say, the administrative affairs of the cities should be placed in the direction of a modern executive board or commission.

port of these towns and the farmers' land and land values would not be taxed for local or city administration but only at a uniform state rate in common with all land and land values for general state and county purposes. A city in its physical aspects is a collection of houses, business blocks, hotels, and other buildings, the presence of which with the people who inhabit them render necessary police and fire protection, light, sewers, waterworks, pavements and other public service. It is proper that the taxes levied from such buildings and improvements should be used for the maintenance of the public service required by the presence of such buildings and appurtenant improvements; the land values created by such accumulated improvements and population to be taxed at a uniform state rate for the general good, public education, administration of justice and such appropriations for local purposes as may be uniformly distributed throughout the State in the discretion of the legislature.

Elections.*

Municipal elections are to be by ballot on the plan of the Massachusetts ballot. The ballot is to contain the

*In the game of practical politics it is the ballots in the box that count. We are ruled by major numbers. In the older day we were ruled by major force. And the transition from the rule of force to the rule of numbers is not necessarily a transition from the rule of might to the rule of right. For there is no difference in principle between major numbers and major force, because the human units being equal, the greater number would be the greater force. It is more convenient, however, to count heads than to fight, as thus there is a saving of those who would otherwise be felled or maimed in the conflict. And so it may be said that the rule of the majority of voices, or of polls, or of ballots, is in its results, only the more righteous, to the extent that reason and judgment are exercised by a sufficient number of voters to hold the balance of power between passionate contending factions.

A political campaign has become a battle of contending factions and in some of its aspects a great sporting event for the delectation of the populace. An election, however, is properly a sober judicial act of selection of magistrates with a view to promoting the public welfare. And there should be less of sport and more of judgment on the part of electors before our frequent elections will best fill their proper office for purification and succession in our representative institutions.

There is great need of men with public views, and public consciences, and public minds, which in the determination of public policy shall exclude the selfish motives which actuate and impel men

names of persons duly nominated for the respective offices but shall not contain any partisan name, emblem, or device.

The names of persons holding office are to go on the ballot as candidates for re-election as of course. Nominations may be made by party conventions as under existing law. The State is not to interfere with the free assemblies of the people for political purposes or for the nomination of candidates for public office, and on the other hand, the State is not to promote the permanent division of the people into factions or parties by affording special facilities for voting partisan slates and tickets.

Political parties are to rest upon the free conventions of the people and the State is to promote freedom of election by requiring the voter to make up his own ticket so that his ballot represents the result of selection and judgment so far as this may be induced by requiring the voter

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in private affairs. And there can be no reward for such men unless it be that public appreciation and recognition which the public has never yet adequately rendered for faithful public service. A United States Senator of wide political observation and experience once said to me, that the people in the mass did not sensibly appreciate faithful and efficient service in their public men and did not rally to the support of faithful public servants at critical times. But let a Congressman, for example, offend some powerful private or selfish interest and it at once has an acute sense of being hurt and would forthwith begin to contrive ways and means of vindication and revenge. And one of the favorite methods was to go into the Congressional district of the offending Congressman and induce some perfectly good man to enter the field for the nomination against the man whom the interests desired to rebuke and humiliate. They would begin by printing complimentary notices in the newspapers in the district. The vanity and pride of the man they desired to use would be worked upon by the methods of flattery, and all the time this good man would not realize that he was being supported, not for his own sake, but only to defeat and rebuke a Congressman who had given offense to special interests. What we need are free elections—free not only from intimidation, duress, and fraud, but free from passion and prejudice without which no free or honest judgment may be had. The embracery of electors by attempting to influence them by promises, money, entertainment or entreaties should not be permitted. The solicitation of votes by offers of free carriage to the polling places has been brought to great abuse in many cities. People attend to their private affairs without such assistance and certainly every upright citizen should attend to his serious public duty without such assistance.

We finally have under the commission form of city government a free ballot upon which each elector may record his individual judgment and voice, and that this be honestly done affords assurance that the result of the election will indicate the consensus of the best civic opinion of the people.